REMARKS / ARGUMENTS

The enclosed is responsive to the Examiner's Final Office Action mailed on September 9, 2005 and is being filed pursuant to a Request for Continued Examination (RCE) as provided under 37 CFR 1.114. At the time the Examiner mailed the Office Action claims 1-103 were pending. By way of the present response the Applicants have: 1) amended claims 1, 8, 9, 10, and 14; 2) added no new claims; 3) have not canceled any claims. As such, claims 1-103 are now pending. The Applicants respectfully request reconsideration of the present application and the allowance of all claims now presented.

Currently Amended Independent Claim 1:

1. (currently amended) A method, comprising:
recurring adjustment of an ongoing data flow between a pair of nodes communicatively coupled by a network, said recurring adjustment performed by way of alterations made to characteristics of said flow, such alterations being scheduled and determined in response to ongoing observations of networking performance statistics related to said flow's previous behavior[.];
said recurring adjustment comprising:
scheduling of flow control adjustments wherein a flow timeout pointer is positioned with respect to a flow timeout threshold value;
said positioning of said flow timeout pointer comprising setting a delay between when a last adjustment is made and when a next adjustment is made;
said setting a delay comprising:
calculating a first flow timeout threshold level;
calculating a second flow timeout threshold level; and
wherein:
said second flow timeout threshold level is beneath said first flow timeout threshold level.

In the Office Action mailed on September 9, 2005, the Examiner applied one reference, U.S. Patent Publication No. 2003/0140159 (hereinafter

"Campbell") in rejecting previously submitted independent claims 1, 16, 38, 60, and 82. The Examiner also rejected dependent claims directed to a flow timeout threshold under the theory of inherency. The Applicant has modified claim 1 to incorporate the flow timeout threshold therein. Therefore, the rejection under the theory of inherency is now also applicable to independent claim 1.

The Applicant respectfully disagrees with the application of the theory of inherency to show anticipation of a claim limitation regarding the flow timeout threshold for the following reasons: 1) Campbell merely mentions words "fault tolerance" only once while referring to a third party product, and has provided no other details whatsoever; 2) the Examiner's conclusion is based on the assumption that 'fault tolerance' can only be implemented using a flow timeout threshold level, (which may not be a correct position). Campbell does not teach, suggest, or disclose, either explicitly or impliedly, the flow timeout threshold in the manner as claimed.

In the Office Action mailed on September 9, 2005, the Examiner has not provided the rationale or evidence tending to show inherency. Pursuant to the guidelines described under MPEP 2112, the Applicant respectfully requests that the Examiner provides the rationale or evidence tending to show that it would have been inherent to include a flow timeout threshold in Campbell in order to handle fault scenarios in the transmission of data between client and server.

Independent claim 1 is directed to scheduling of flow control adjustments wherein a flow timeout pointer is positioned with respect to a flow timeout

threshold value; the positioning of the flow timeout pointer comprising setting a delay between when a last adjustment is made and when a next adjustment is made; the setting a delay comprising calculating a first flow timeout threshold level, calculating a second flow timeout threshold level, wherein the second flow timeout threshold level is beneath the first flow timeout threshold level.

Campbell is silent on scheduling of flow control adjustments wherein a flow timeout pointer is positioned with respect to a flow timeout threshold value; the positioning of the flow timeout pointer comprising setting a delay between when a last adjustment is made and when a next adjustment is made; the setting a delay comprising calculating a first flow timeout threshold level, calculating a second flow timeout threshold level, wherein the second flow timeout threshold level is beneath the first flow timeout threshold level. Therefore, Campbell does not teach, suggest, or disclose scheduling of flow control adjustments wherein a flow timeout pointer is positioned with respect to a flow timeout threshold value; the positioning of the flow timeout pointer comprising setting a delay between when a last adjustment is made and when a next adjustment is made; the setting a delay comprising calculating a first flow timeout threshold level, calculating a second flow timeout threshold level, wherein the second flow timeout threshold level is beneath the first flow timeout threshold level.

Independent claims 16, 38, 60, and 82 are directed to updating the statistics of arrival events. These claims further define an arrival event as including the arrival of a message sent by the server to the client. Contrarily, Campbell logs parameters such as network usage, processor usage and the

quality of service data. The Applicant respectfully submits that parameters such as network usage, processor usage and the quality of service are not arrival events as contemplated by claims 16, 38, 60, and 82 ("arrival event is the arrival of one of the messages at the client"). Furthermore, Claims 16, 38, 60, and 82 specifically recite statistics being maintained by the client. Campbell, however, discloses that the log is maintained by the server. Therefore, the Applicant respectfully submits that Campbell does not teach, suggest, or disclose all the limitations of the claims 16, 38, 60, and 82.

CONCLUSION

For the reasons provided above, applicant respectfully submits that the current set of claims are allowable. If the Examiner believes an additional telephone conference would expedite or assist in the allowance of the present application, the Examiner is invited to call Robert B. O'Rourke at (408) 720-8300.

Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due.

Respectfully submitted,

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Date: 1/23/06, ~~2005~~

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